



POLICE DEPARTMENT

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In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Lieutenant Donald Stewart : ORDER
Tax Registry No. 932015 : OF
RETIRED : DISMISSAL
-----X

Lieutenant Donald Stewart, Tax Registry No. 932015, having been served with written notice, has been tried on written Charges and Specifications numbered 2023-28087 as set forth on form P.D. 468-121, dated March 13, 2023, and after a review of the entire record, Respondent is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Lieutenant Donald Stewart from the Police Service of the City of New York.

Edward A. Caban

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER

EFFECTIVE: 9/26/23

COURTESY • PROFESSIONALISM • RESPECT

Website: <http://nyc.gov/nypd>



POLICE DEPARTMENT

September 18, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2023-28087
Lieutenant Donald Stewart	:	
Tax Registry No. 932015	:	
RETIRED	:	

-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Kevin Andrade & Daniel Maurer, Esqs.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: John Arlia, Esq.
Wenger & Arlia, Esqs.
20 Vesey St. Suite 210
New York, NY 10007

To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Lieutenant Detective Squad Commander Donald Stewart, on or about March 11, 2023, while off-duty and assigned to Narcotics Borough Queens South, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit; said Lieutenant Detective Squad Commander Stewart did wrongfully operate a motor vehicle while under the influence of an intoxicant.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

NYS VTL Section 1192(3)

OPERATING A MOTOR
VEHICLE WHILE UNDER
THE INFLUENCE OF
ALCOHOL OR DRUGS

2. Said Lieutenant Detective Squad Commander Donald Stewart, on or about March 11, 2023, while off-duty and assigned to Narcotics Borough Queens South, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit; said Lieutenant Detective Squad Commander Stewart did wrongfully operate a motor vehicle while his ability to do so was impaired by an intoxicant.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

NYS VTL Section 1192(1)

OPERATING A MOTOR
VEHICLE WHILE UNDER
THE INFLUENCE OF
ALCOHOL OR DRUGS

3. Said Lieutenant Detective Squad Commander Donald Stewart, on or about March 11, 2023, while off-duty and assigned to Narcotics Borough Queens South, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit; said Lieutenant Detective Squad Commander Stewart was unfit for duty.

A.G. 304-06, Page 1, Paragraph 1

GENERAL REGULATIONS

A.G. 304-04, Page 1, Paragraph 2

FITNESS FOR DUTY

4. Said Lieutenant Detective Squad Commander Donald Stewart, on or about March 11, 2023, while off-duty and assigned to Narcotics Borough Queens South, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit; said Lieutenant Detective Squad Commander Stewart wrongfully refused to submit to a breathalyzer test.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 27, 2023. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct.¹ The Department called Sergeant Stephen Williams, Police Officer Ahmed Marie, Police Officer Kenneth Gallart, and Captain Hwan Kim as witnesses. Respondent was also ordered to testify by the Department. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I find Respondent Guilty of all four specifications, and recommend that he be dismissed from his employment with this Department.

ANALYSIS

Sergeant Stephen Williams, who is currently assigned to the Internal Affairs Bureau ("IAB"), credibly testified that on March 11, 2023, Respondent was arrested for Driving While Intoxicated, a misdemeanor under the New York State Vehicle and Traffic Law. Sergeant Williams was subsequently assigned to investigate the matter. In the course of the investigation, IAB personnel obtained surveillance video from Essence Bar in Brooklyn. (Tr. 27-28) The recording shows that at approximately 2100 hours on March 10, 2023, Respondent entered the establishment, where he remained until approximately 0200 hours on March 11, 2023. (Tr. 34, 40-41) The video shows Respondent consuming beverages; copies of receipts obtained from Essence bar, with the name Donald Stewart on them, show that Respondent purchased multiple alcoholic beverages. (Tr. 40; Dept. Exs. 11 & 12)

¹ The trial proceeded on an expedited schedule because Respondent filed for retirement with a scheduled retirement date of August 29, 2023. After the trial concluded, Respondent changed the date, and retired from the Department effective, July 31, 2023.

Police Officer Ahmed Marie, from the 81 Precinct, credibly testified that on March 11, 2023 at approximately 0453 hours, he and his partner Police Officer Iftekharul Alam, responded to the scene of a radio run of an unconscious male in a black sedan. Upon arriving at Hart Street and Lewis Avenue, Officer Marie observed that FDNY personnel had arrived first. He also saw that a black BMW sedan had collided with a silver Honda Pilot. (Tr. 91-92) Officer Marie testified that upon arrival, he observed Respondent in the BMW with the engine running. He noticed FDNY personnel say something to Respondent who then exited the vehicle to speak to the officers. (Tr. 114-15) Respondent identified himself as a member of service. (Tr. 94) Officer Marie noted that there was an odor of alcoholic beverages emanating from Respondent, his eyes were blood-shot and watery, and his speech was slurred and unclear. (Tr. 98) Officer Marie testified that in the course of his work as a police officer, as well as in his personal life, he has seen intoxicated individuals, and in his opinion, Respondent was intoxicated. (Tr. 108-10)

Police Officer Kenneth Gallart credibly testified that on March 11, 2023, he was assigned to Highway Patrol #2. He has received extensive training in intoxicated driver detection and the administration of various sobriety tests, commonly referred to as IDTU testing. Indeed, he has been involved in at least 500 arrests where these tests have been administered. (Tr. 144-45) On the date in question, Officer Gallart responded to the 78 Precinct to process the IDTU testing of Respondent. (Tr. 148) After the standard 20 minute period of observation, during which Respondent was required to stay in the same room with Officer Gallart, the administration of the tests commenced. Officer Gallart asked Respondent several times to blow into the Intoxilyzer 9000 breathalyzer test, which he refused. He then asked Respondent to complete three field sobriety tests. Respondent refused the first horizontal gaze nystagmus test, and submitted to the walk and turn test as well as the one legged stand test. (Tr. 149-50) Officer Gallart noted

indications of impairment in both tests. (Tr. 157-59) Additionally, he testified that he detected an odor of alcoholic beverages emanating from Respondent, his eyes were blood-shot and watery, and his speech was a little slurred. Officer Gallart testified that he in the course of his work as a police officer, as well as in his personal life, he has seen intoxicated individuals, and in his opinion, Respondent was under the influence of alcohol. (Tr. 160-61)

Captain Hwan Kim, credibly testified that on March 11, 2023 at approximately 0530 hours, while he was acting as the Duty Captain for Patrol Borough Brooklyn North, he was notified of the arrest of Respondent for driving while intoxicated. (Tr. 187-88) He went to the 78 Precinct to be present for the IDTU testing, and to act as the arresting officer. (Tr. 188-89, 194) Captain Kim spoke to Respondent and observed the administration of the IDTU tests. He testified that there was an odor of alcoholic beverages emanating from Respondent and that his eyes were blood shot and watery. Captain Kim explained that he completed a “Fitness for Duty” report, and that he left both the “Fit for Duty” and the “Unfit for Duty” checkboxes blank. He testified that, in spite of the clerical oversight, his determination was that Respondent was unfit for duty. (Tr. 190-91; Dept. Ex. 5)

Respondent was ordered to the stand by the Department². Although he admitted to being at the Essence Bar and to purchasing and consuming alcoholic beverages while he was there (Tr. 220-21), the rest of his testimony was evasive, argumentative, and was not forthcoming. As a result, the Department moved to have the transcript and audio recording of his official interview admitted into evidence to assist the tribunal with its deliberations, and that motion was granted. Respondent had the opportunity to be called to the stand by his own attorney in order to ensure

² Respondent did not allow his attorney to call him to the stand to examine him. Respondent’s counsel informed the tribunal that Respondent had been advised not to testify by the attorney representing him in his pending criminal case. (Tr. 206-07) The Department ordered him to the stand, and were granted permission to treat Respondent as a hostile witness consistent with that long-standing legal principle.

that the tribunal was in possession of all the facts and information which he felt were relevant to his defense. Instead he chose to treat the proceedings with contempt, and to give non-responsive answers to direct questions posed by the Department. It is always the preference of this tribunal to have live testimony that is subject to cross-examination; however Respondent's behavior in the courtroom led the tribunal to allow the recording and transcript of his official Department interview to be entered into evidence, in the interest of creating the most complete record.

As part of the investigation into the allegations against him, Respondent was interviewed on March 20, 2023 by five ranking officers, all assigned to the Internal Affairs Bureau. He was represented by counsel and was informed of the Administrative Guide provisions which govern such interviews. During the interview he admitted to purchasing and consuming alcoholic beverages at Essence Bar, driving his vehicle after he left, taking sleeping medication while operating his vehicle, losing consciousness and control of the vehicle, and hitting a parked car. He also acknowledged during the interview that he refused the breathalyzer test (Dept. Ex. 10, IAB Interview Transcript at 13, 22, 31)

At trial, Respondent did not dispute or deny the admissions he made during his official Department interview, which occurred about a week after the incident. These admissions, combined with the straightforward, professional testimony of the Department's witnesses regarding their observations, support a finding that Respondent engaged in the charged misconduct. Accordingly, I find that the Department met its burden of proving by a preponderance of the evidence that on March 11, 2023, Respondent wrongfully operated a motor vehicle while under the influence of an intoxicant; wrongfully operated a motor vehicle while his ability to do so was impaired by an intoxicant; was unfit for duty; and engaged in conduct prejudicial to the good order, efficiency and discipline of the Department by wrongfully refusing

to submit to a breathalyzer test. Respondent is therefore found Guilty of Specifications 1, 2, 3, and 4.

PENALTY

In order to determine an appropriate penalty, this tribunal, guided by the Department's Disciplinary System Penalty Guidelines (Disciplinary Matrix), considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 22, 2002, has been found Guilty of the four specifications he was charged with. The Department has recommended termination; I concur with their recommendation for the reasons set forth below.

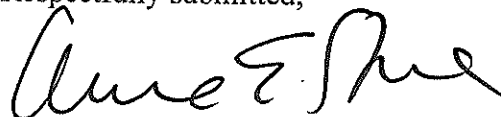
This is the third Department disciplinary case against Respondent for driving while intoxicated and refusing a Breathalyzer test. In 2016, Respondent negotiated a penalty of sixty-four (64) suspension days without pay, sixteen (16) vacation days, one-year dismissal probation and compliance with breath testing and counseling for misconduct that was the subject of two disciplinary cases involving separate 2013 and 2014 incidents. In the first case, Respondent pled guilty to (i-ii) operating a motor vehicle while under the influence of an intoxicant and while his ability was impaired by an intoxicant, (iii) refusing a breathalyzer test and (iv) causing property damage and failing to remain at the scene of an accident. In the second matter, Respondent pled guilty to (i-ii) operating a motor vehicle while under the influence of an intoxicant and while his ability was impaired by alcohol, (iii) refusing a breathalyzer test and (iv) being unfit for duty.

Evidence of prior discipline for DWI events will *always* be considered as a relevant factor in any subsequent alcohol-related matter. (Disciplinary Matrix p. 39)

The aggravated penalty for both operating a motor vehicle while intoxicated and operating while ability impaired is termination. The aggravated penalty for refusal to submit to a breathalyzer test is termination. The aggravated penalty for being unfit for duty is termination. I find Respondent's prior history of driving while under the influence to be a hugely significant aggravating factor. I further find there are no mitigating factors present in this record.

Respondent has been found guilty of operating a motor vehicle while under the influence of an intoxicant and while his ability was impaired by an intoxicant; wrongfully refusing to submit to a breathalyzer test; and being unfit for duty. The evidence at trial established that Respondent spent several hours at a bar, purchasing alcoholic beverages, and he can be seen on video consuming beverages served to him by the bartender. After leaving the bar, Respondent hit a parked car with his vehicle, was arrested for DWI, taken to the precinct, where he refused a breathalyzer test and failed two (2) field sobriety tests, and was found unfit for duty. This combined with Respondent's previous, serious, alcohol and DWI-related discipline, makes his continued employment with the Department untenable. He has shown a troubling pattern of behavior that demonstrates a refusal to follow the laws he is sworn to uphold and an inability to conduct himself in accordance with the standard the Department sets for its officers. Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Anne E. Stone

Assistant Deputy Commissioner Trials

APPROVED



EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
LIEUTENANT DONALD STEWART
TAX REGISTRY NO. 932015
DISCIPLINARY CASE NO. 2023-28087

Respondent was appointed to the Department on July 22, 2002. On his three most recent annual performance evaluations, he received 4.5 ratings of “Extremely Competent/ Highly Competent for 2017, 2019 and 2021. He has been awarded seven (7) medals for Excellent Police Duty and two (2) medals for Meritorious Police Duty.

In 2016, Respondent negotiated a penalty of sixty-four (64) suspension days without pay, sixteen (16) vacation days, one-year dismissal probation and compliance with breath testing and counseling for misconduct that was the subject of two disciplinary cases involving separate 2013 and 2014 incidents. In the first case, Respondent pled guilty to (i-ii) operating a motor vehicle while under the influence of an intoxicant and while his ability was impaired by an intoxicant, (iii) refusing a breathalyzer test and (iv) causing property damage and failing to remain at the scene of an accident. In the second matter, Respondent pled guilty to (i-ii) operating a motor vehicle while under the influence of an intoxicant and while his ability was impaired by alcohol, (iii) refusing a breathalyzer test and (iv) consuming an intoxicant to the extent he was unfit for duty.

In 2002, Respondent forfeited thirty (30) suspension days without pay and fourteen (14) vacation days after pleading guilty to leaving the scene of an accident while still a probationary police officer.

In connection with the instant case, Respondent was suspended without pay from March 11 to April 9, 2023.

For your consideration.

Anne E. Stone
Assistant Deputy Commissioner Trials